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**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
**SACRAMENTO DIVISION**

In re ) Case No 11-49288-E-13  
LYUDMILA KISHCHENKO, )  
Debtor(s) )

**This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion**

**MEMORANDUM OPINION AND DECISION**

Liliya Walsh has filed a Motion for relief from the automatic stay pursuant to Local Bankruptcy Rule 9014-1(f)(2). The original Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and Office of the United States Trustee on December 23, 2011. By the court's calculation, 18 days' notice was provided. Fourteen days' notice is required. However, the Proof of Service filed indicates that the Motion was sent to "Andrey Kishchenko" (Dkt 17). Mr. Kishchenko is the Debtor's husband and commenced his own Chapter 13 case in November 2011, in which Movant filed a motion for relief from the automatic stay.

1 Movant appeared at the January 10, 2012, hearing and presented  
2 the court with a proof of service attesting to service of the  
3 pleadings on the Debtor The Proof of Service was filed on  
4 January 10, 2012 (Dkt 24) Proper notice and service has been  
5 provided

6 The hearing was continued to January 17, 2012, at 10 30 a m ,  
7 at which time both the Movant and Debtor appeared The court  
8 conducted the hearing and issues this Decision on the Motion

9 **MOTION FOR RELIEF FROM STAY**

10 Movant seeks relief from the automatic stay to allow her to  
11 proceed with obtaining possession of real property commonly known  
12 as 2201 Raintree Court, Rocklin, California It is alleged that  
13 Movant rented the property to the Debtor and her husband, Andrey  
14 Kishchenko When the rental relationship came to an end, Movant  
15 served several three-day notices to vacate the property When the  
16 Debtor and Andrey Kischenko did not vacate, Movant commenced an  
17 unlawful detainer proceeding in state court Trial in the unlawful  
18 detainer action was scheduled for November 28, 2011, but was stayed  
19 by Andrey Kishchenko when he filed a Chapter 13 bankruptcy case  
20 That Chapter 13 case was dismissed on December 5, 2011

21 The unlawful detainer trial was rescheduled for December 23,  
22 2011 That trial was stayed by the Debtor commencing the instant  
23 Chapter 13 case It is alleged that the Debtor and her husband  
24 have filed a series of bankruptcy cases solely for the purpose of  
25 disrupting the state court unlawful detainer process, without any  
26 intention to engage in a good faith Chapter 13 reorganization

27 Movant further asserts that her family is suffering a  
28 significant hardship by the Debtor and Andrey Kischenko failing to

1 return possession of the property to Movant Rent has not been  
2 paid, while Movant continues to have the expenses for the property  
3 No payment of rent has been made for the months of September,  
4 October, and November 2011 More significantly, Movant's family  
5 needs to use the 2201 Raintree Court, Rocklin, California property  
6 as its personal residence

7 The Declaration of Liliya Walsh is provided in support of the  
8 motion She provides testimony as to the attempts to obtain  
9 possession of the property, the providing of three-day notices, and  
10 commencing the unlawful detainer proceedings She also testifies  
11 to the failure of the Debtor to make full rent payments since  
12 October 2010, and the failure to make any rent payments for the  
13 months of September, October, and November 2011 She states that  
14 the lease was terminated on January 31, 2010, and the Debtor was in  
15 possession on a month-to-month lease

16 The Motion asserts that the present bankruptcy filing is part  
17 of a delay tactic connected to the Andrey Kishchenko bankruptcy  
18 filing It is asserted that the Andrey Kishchenko Chapter 13  
19 filing and the present Chapter 13 filing are a coordinated effort  
20 to deprive Movant of her right to possession of the property The  
21 Movant directs the court to consider the prior Chapter 7 case filed  
22 by the Debtor and Andrey Kischenko, in which both received their  
23 discharge in July of 2010

24 **OPPOSITION STATED AT THE HEARING**

25 The Debtor appeared at the hearing and asserted that the  
26 Movant should not be granted relief from the automatic stay for  
27 several reasons First, she contends that the property has been  
28 transferred into a trust The Movant does not dispute that it has

1 been transferred into a trust, and asserts that Movant is the  
2 beneficiary of the trust and manages the trust property

3 The Debtor next argues that she disputed the arrangement by  
4 which she and her husband were given possession of the property and  
5 that they did not have to give possession back to Movant These  
6 real property and contract issues well exceed the summary scope of  
7 a motion for relief and are properly the subject of the pending  
8 unlawful detainer proceeding The Debtor could not state any  
9 bankruptcy issues relating to this dispute

10 The Debtor was asked, and could not provide information to the  
11 court as to what reorganization was being attempted The only  
12 answer given was that the Debtor and her husband have some tax  
13 liability they need to address The Debtor also stated that she  
14 did not know what was to happen in the bankruptcy case, but she had  
15 an attorney who was working on the papers When asked the  
16 attorney's name, the Debtor's response was "Dave," and she was  
17 unable to provide any last name

18 In response to the court's inquiry as to why she did not file  
19 bankruptcy with her husband in November 2011, and why was his  
20 bankruptcy filing and the current bankruptcy filed by her on the  
21 eves of the original and reset state court unlawful detainer  
22 trials, the Debtor's response was that it was because a tax debt  
23 would appear on their credit report Further, she could not  
24 provide the court with any explanation as to why she and her  
25 husband were filing separate cases if each of them needed to  
26 reorganize

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**TWO PRIOR BANKRUPTCY CASES**Case 10-28185 Andrey Kishchenko and Lyudmila Kishchenko

Chapter 7  
Case Filed March 31, 2010  
Discharge Entered July 7, 2010  
Case Closed August 6, 2010

This Chapter 7 case was filed by the Debtor and her husband, Andrey Kishchenko. The address for the Debtor and her husband is listed as 2201 Raintree Court, Rocklin, California. The Statement of Financial Affairs lists the two debtors as having \$7,040.00 in income in 2009, and \$0.00 income in 2010. Schedule J lists an expense of \$1,450.00 a month for rent or mortgage. No creditor with a secured claim is listed on Schedule D and Schedule G does not list a lease.

Case 11-47064 Andrey Kishchenko

Chapter 13  
Case Filed November 11, 2011  
Case Dismissed December 5, 2011

This Chapter 13 case was filed solely by Andrey Kishchenko, the co-debtor of Lyudmila Kishchenko in the Chapter 7 case. On his bankruptcy petition, Andrey Kishchenko lists 2201 Raintree Court, Rocklin, California, as his address. On page two of the Petition, Andrey Kishchenko incorrectly states that he has not filed any prior bankruptcy case in the eight years preceding the commencement of his present case. On the Summary of Schedules, Andrey Kishchenko states that he has \$0.00 of real property assets and \$0.00 of personal property assets. Further, that he has \$0.00 of secured claims, \$0.00 of unsecured priority claims, and \$1,500.00 of unsecured non-priority claims. Schedule A attached to the petition lists 2201 Raintree Court, Rocklin, California as an

1 asset, with the value stated as "unknown " Schedule F lists one  
2 creditor, named "Rental" with an address of 2201 Raintree Court,  
3 Rocklin, California, having a claim in the amount of \$1,500 00 A  
4 Notice of Incomplete filing was issued by the Clerk for Andrey  
5 Kishchenko's failure to file a Chapter 13 Plan, Means Test,  
6 Schedules B, C, D, E, G, H, I, and J, and Statement of Financial  
7 Affairs

8 The Verification of Master Mailing List filed by Andrey  
9 Kishchenko lists only one person, "Rental, 2201 Raintree Court,  
10 Rocklin, California 95765 " Mr Kishchenko failed to file the basic  
11 pleadings necessary to prosecute a Chapter 13 case identified in  
12 the Notice of Incomplete Filing and the court dismissed the case

13 The Movant filed a motion for relief from the automatic stay  
14 in Mr Kishchenko's case The case having been dismissed prior to  
15 the hearing on the motion for relief, it was denied as moot The  
16 motion in Mr Kishchenko's case is substantially the same as the  
17 Motion filed in the Lyudmila Kishchenko case now before the court

18 **CURRENT LYUDMILA KISHCHENKO CHAPTER 13 CASE**

19 The Petition filed in this case lists 2201 Raintree Court,  
20 Rocklin, California, as the Debtor's residence On page 2 of the  
21 Petition, the Debtor incorrectly states that she and her spouse  
22 have not filed any other bankruptcy cases in the eight year period  
23 preceding the commencement of the instant case Schedule A lists  
24 the 2201 Raintree Court, Rocklin, California, property as an asset,  
25 with the value stated as "unknown " Schedule F lists one creditor  
26 holding a general unsecured claim This creditor is stated to be  
27 "Rental, 2201 Raintree Court, Rocklin, CA," with the claim listed  
28 as disputed and unliquidated, in the amount of \$1,500 00 The

1 Verification of Master Mailing List filed by the Debtor lists only  
2 one person, "Rental, 2201 Raintree Court, Rocklin, California  
3 95765 " These pleadings appear to be substantially the same as  
4 those filed by Andrey Kischenko in Case No 11-47064

5 The Clerk issued a Notice of Incomplete Filing of documents in  
6 this case, with the Debtor failing to file the Chapter 13 Plan,  
7 Means Test, Schedules B, C, D, E, G, H, I, and J, and the Statement  
8 of Financial Affairs On January 5, 2012, the Debtor filed a  
9 Request for Extension of Time to File and Complete Schedules The  
10 grounds stated for the extension was "Due to multiple business  
11 activities, and financial issues " No order on the motion to  
12 extend was entered by the court None of the missing documents  
13 have been filed by the Debtor as of January 17, 2012

14 The Chapter 13 Trustee has filed a statement of non-opposition  
15 to the Motion for Relief From the Automatic Stay January 6, 2012  
16 docket entry On January 13, 2012, the Chapter 13 Trustee filed a  
17 Motion to Dismiss the case for failure to file documents and  
18 unreasonable delay which is prejudicial to creditors

#### 19 **RULING**

20 Pursuant to Local Bankruptcy Rule 9014-1(f)(2), if the  
21 responding party appears at the hearing and presents an opposition  
22 or good cause, the court will set the matter for further hearing  
23 With respect to this motion, the Debtor has not stated an  
24 opposition to the Motion The majority of her argument would be  
25 the opposition in the unlawful detainer proceeding, not a summary  
26 bankruptcy motion for relief from the stay proceeding See *Hamilton*  
27 *v Hernandez*, No CC-04-1434-MaTK, 2005 Bankr LEXIS 3427 (B A P  
28 9th Cir Aug 1, 2005), relief from stay proceedings are summary

1 proceedings which address issues arising only under 11 U S C  
2 Section 362(d) *Hamilton*, 2005 Bankr LEXIS 3427 at \*8-\*9 (citing  
3 *Johnson v Righetti* (*In re Johnson*), 756 F 2d 738, 740 (9th Cir  
4 1985)) The court does not determine underlying issues of  
5 ownership, contractual rights of parties, or issue declaratory  
6 relief

7 Additionally, when unable to respond to questions as to what  
8 the Debtor, as a *pro se* litigant, was trying to accomplish through  
9 the bankruptcy process, reference was made to "Dave" the attorney  
10 who was working on the paperwork No attorney has appeared for the  
11 Debtor in this case

12 No colorable opposition to the Motion has been presented by  
13 the Debtor Merely contending that the automatic stay should  
14 prevent an unlawful detainer proceeding from being conducted, and  
15 the state court judge properly addressing the issues of right to  
16 possession of the property, does not state an opposition to the  
17 Motion

18 The automatic stay may be terminated for cause pursuant to  
19 11 U S C § 362(d)(1) or because there is no equity in the property  
20 for the Debtor and it is not necessary to any effective  
21 reorganization, 11 U S C § 362(d)(2) For this Motion, both  
22 grounds apply

23 Based on the evidence provided, the court finds that Debtor  
24 has no equity in the property Once a movant under 11 U S C  
25 § 362(d)(2) establishes that a debtor has no equity, it is the  
26 burden of the debtor to establish that the collateral at issue is  
27 necessary to an effective reorganization *United Savings Ass'n of*  
28 *Texas v Timbers of Inwood Forest Associates Ltd* , 484 U S 365,



1 375-76 (1988), 11 U S C § 362(g)(2) However, Debtor has not  
2 filed a plan or presented opposition showing that the subject  
3 property is necessary to an effective reorganization Based upon  
4 the evidence submitted, the court determines that there is no  
5 equity in the property for either the Debtor or the Estate  
6 11 U S C § 362(d)(2)

7 To the extent Movant was seeking relief for "cause" under  
8 § 362(d)(1), the court maintains the right to grant relief from  
9 stay for cause when the debtor has not been diligent in carrying  
10 out his or her duties in the bankruptcy case, has failed to make  
11 required payments, or is using bankruptcy as a means to delay  
12 payment or foreclosure *In re Harlan*, 783 F 2d 839 (B A P 9th  
13 Cir 1986), *In re Ellis*, 60 B R 432 (B A P 9th Cir 1985)  
14 Cause includes the interests of the Movant not being adequately  
15 protected Under the facts and circumstances of this motion, the  
16 court further determines that Movant's interests, as the owner of  
17 property under an alleged terminated lease, are not adequately  
18 protected Movant's recourse under this situation is to address  
19 the issue in the state court unlawful detainer proceeding, in which  
20 the Debtor can assert her rights to the extent that such relief is  
21 not warranted The court determines that cause exists for  
22 terminating the automatic stay since the Debtor failed to make  
23 post-petition payments 11 U S C § 362(d)(1), *In re Ellis*, 60 B R  
24 432 (B A P 9th Cir 1985)

25 **RELIEF PURSUANT TO 11 U S C § 362(d)(4)**

26 While the legal basis for the relief requested was not pled  
27 with the clarity of an attorney, this *pro se* Movant has asserted  
28 that the multiple filing of bankruptcy cases by the Debtor and her

1 husband, Andrey Kischenko, have been part of a scheme to improperly  
2 delay the state court unlawful detainer proceeding Movant  
3 expressly asserts that under the facts of the two cases, the Debtor  
4 is not attempting any honest prosecution of the bankruptcy case  
5 This is a contention that the Debtor is not proceeding in good  
6 faith

7 In addition to the first two grounds for relief from the  
8 automatic stay, 11 U S C § 362(d)(4) provides further relief with  
9 respect to the automatic stay of an act against real property when  
10 the court finds that the filing of the bankruptcy petition was  
11 part of a scheme to delay, hinder, and defraud creditors that  
12 involved either (1) transfer of all or part of the property or (2)  
13 multiple bankruptcy filings affecting such real property

14 The unlawful detainer proceeding was filed on August 9, 2011  
15 It was amended October 20, 2011, to include the amount owed for  
16 past due rents Though the Debtor and Andrey Kischenko had  
17 discharged their obligations in the 2010 Chapter 7 bankruptcy case,  
18 they had fallen into default on their rent obligations After the  
19 rental arrangement was terminated and Movant concluded the month-  
20 to-month rental, the Debtor and Andrey Kischenko retained  
21 possession of the property

22 On the eve of the first date set for the unlawful detainer  
23 trial, Andrey Kischenko commenced his Chapter 13 case with a  
24 skeletal filing He failed to file the basic pleadings necessary,  
25 and that case was dismissed From reviewing what was filed, the  
26 court cannot discern any reorganization to be undertaken

27 Following the dismissal of the Andrey Kischenko case, the  
28 unlawful detainer trial was reset for December 23, 2011 The Debtor

1 commenced the present Chapter 13 case with her skeletal filing on  
2 December 21, 2011. None of the additional basic documents required  
3 to prosecute a Chapter 13 case have been filed by the Debtor,  
4 notwithstanding 27 days having passed since this case was  
5 commenced. From the documents filed, the court cannot discern any  
6 good faith reorganization being attempted in this case. Further,  
7 it appears that the skeletal pleadings used for this case are  
8 substantially the same as used by Andrey Kischenko in his prior  
9 Chapter 13 case.

10 The court also considers that the Debtor and Andrey Kischenko  
11 both incorrectly stated under penalty of perjury in their separate  
12 Chapter 13 Petitions that neither they nor their spouse had  
13 commenced any bankruptcy cases in the eight year period preceding  
14 the commencement of their respective Chapter 13 cases. Both listed  
15 their one creditor holding a general unsecured claims as "Rental,"  
16 and then used their own address for that "creditor." Neither the  
17 Debtor nor Andrey Kischenko listed Movant, the person who was  
18 pursuing them in the state court unlawful detainer action.

19 The court finds that the filing of the present bankruptcy case  
20 is one where multiple bankruptcy cases have been filed as part of  
21 a scheme to delay, hinder and defraud Movant, a creditor. Upon  
22 such finding, the court further orders that this order for relief  
23 from the automatic stay will be binding in any subsequent  
24 bankruptcy filings as to this property for a period of two years  
25 from the date of the order granting relief from the stay, if this  
26 order is properly recorded.

27 In granting the 11 U.S.C. § 362(d)(4) relief, the Debtor is  
28 not without remedy. She may properly assert her rights and

1 defenses in the state court unlawful detainer action Further, in  
2 a subsequent bankruptcy case the judge may, based on a change in  
3 circumstances or good cause shown, may grant relief from this order  
4 after notice and hearing

5 The court shall issue an order terminating and vacating the  
6 automatic stay to allow Liliya Walsh, and her agents,  
7 representatives and successors, to exercise her rights to obtain  
8 possession and control of the real property commonly known as  
9 2201 Raintree Court, Rocklin, California, including unlawful  
10 detainer or other appropriate judicial proceedings and remedies to  
11 obtain possession thereof

12 The moving party has alleged adequate facts and presented  
13 sufficient evidence to support the court waiving the 14-day stay of  
14 enforcement required under Rule 4001(a)(3)

15 No other or additional relief is granted by the court

16 This Memorandum Opinion and Decision constitutes the court  
17 findings of fact and conclusions of law in this contested Matter  
18 Fed R Civ P 52, Fed R Bank R 9014, 7052 Because a hearing  
19 on a Motion for Relief From the Automatic Stay is a summary  
20 Proceeding, the findings of fact and conclusions of law made by the  
21 court are limited to this Motion only, and no determination is made  
22 as to the respective rights of the parties, including, without  
23 limitation, the Debtor's right to occupy, possess, or deliver  
24 possession of the real property, and the existence or non-existence  
25 of any lease or rental agreement

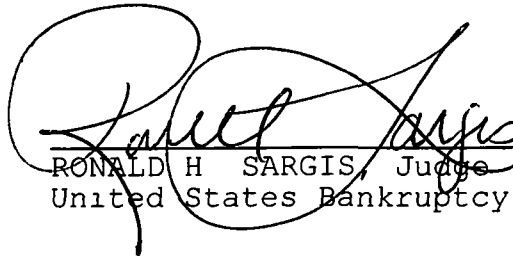
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1 The court shall enter an order granting relief from the  
2 automatic stay consistent with this Decision

3 Dated January 17, 2012

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6 RONALD H. SARGIS, Judge  
7 United States Bankruptcy Court  
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CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that the attached document(s) was served by mail to the following entities listed at the address(es) shown below

Service List

Liliya Walsh  
PO Box 1202  
Rockling, CA 95677


Lyudmila Kishchenko  
2201 Raintree Ct  
Rocklin, CA 95765

David Cusick  
PO Box 1858  
Sacramento, CA 95812-1858

Office of the U S Trustee  
Robert T Matsui United States Courthouse  
501 I Street, Room 7-500  
Sacramento, CA 95814

DATE

1/17/2012

  
Deputy Clerk

Mark D Swim